THE HON'BLE MR JUSTICE J.CHELAMESWAR

WRIT PETITION No. 11174 of 1995

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Dated: 19.04.2006

Between:

Dega Seshu Reddy (died) per L.R.

D. Chinna Srinivasulu Reddy

… Petitioners

AND

The Joint Collector, Nellore

& others.

… Respondents

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THE HON'BLE MR JUSTICE J.CHELAMESWAR

WRIT PETITION No. 11174 of 1995

ORDER:-

This writ petition is filed with the prayer as follows:

> "… … Hon'ble Court may be pleased to issue a Writ or order or direction one in the nature of writ of Mandamus declaring the action of the 3rd respondent and his subordinates in seeking to dispossess the petitioner from Ac.18-35 cents in Sy.No.141/1 and Ac.2-63 cents in Sy.No.141/3 in all Ac.20-98 cents of dry land in patta No.546 situated in Kanuparthipadu village, Nellore Rural Mandal, Nellore District by issuing oral orders, as illegal, arbitrary, without jurisdiction and violative of principles of natural justice and also Art. 300-A of Constitution of India and consequently direct the respondents and

their subordinates not to interfere with the possession and enjoyment of the petitioner in respect of the above said land and pass such other order or orders in the interest of justice."

Originally, the writ petition is filed by the 1st petitioner, who died during the pendency of the writ petition. Therefore, the 2nd petitioner, who is the son of the 1st petitioner, was brought on record as the legal representative of the 1st petitioner, by an order of this Court dated 17-06-2005.

In the affidavit filed in support of the writ petition, the petitioner claims absolute ownership of land admeasuring
Ac.18-33 cents in Sy.No.141/1 and Ac.2-83 cents in Sy.No.141/3 situated in Kanuparthipadu Village, Nellore Rural Mandal of Nellore District. The petitioner claims that he purchased the said property from 14 persons, the details of which may not be necessary at this juncture, under a registered sale deed dated 21.07.1958. He also claimed that he has been continuously in possession of the said property ever since he purchased it and that he made a declaration under the A.P. Land Reforms Act 1973, and the property has been computed in the holdings of the petitioner. It is asserted in the affidavit that he has been regularly paying the land revenue on the abovementioned land. Further, a ryotwari passbook under the A.P. Records of Ryots Act, is also issued in favour of the petitioner. The petitioner, thereafter, complained that some four days prior to the date of filing the writ petition, the Village Administrative Officer concerned, without issuing any notice in writing, orally instructed him to vacate the land on the ground that the land belongs to the Government. Hence, the present writ petition.

The writ petition was admitted on 14-06-1995 and an interim suspension was granted.

On behalf of the first three respondents, a counter is filed by the 1st respondent, who is the Joint Collector of Nellore.

In the counter, it is stated that total extent of Ac.41.96 cents in Sy.Nos.141/1 and 141/3 of Kanuparthipadu village is classified in the revenue records as “Inam Tank”. Therefore, action was initiated to take possession of the land in view of the declaration contained under Section 2(A) of The Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 (for short “the Act”). It is further sated in the counter-affidavit that a notification in Form-I was issued by the 3rd respondent on 13.05.1995, proposing to hold an enquiry under Section 3 of the Act for the purpose of determining the nature of the lands in the abovementioned survey numbers, which are classified as Inam Tank under the revenue records. It is further asserted that the said notification was displayed on the notice board of the Grampanchayat, Kanuparthipadu village on 14.05.1995 and also published in the locality by beat of tom-tom on the same date inviting objections, if any.

According to the counter, no objections were received and, therefore, a final notification in Form-II was issued by the

3rd respondent on 06.06.1995, whereby the lands in question were declared as Inam Tank and thereafter, the lands stood vested in the State free of all encumbrances under Section 2(b) of the Act.

It is also admitted in the counter that the lands in question are originally a part of the Inam and in the year 1958

Sri Sarvabotla Satyanarayana, Smt. Sarvabotla Subbarathnamma and other legal heirs of the original inamdars sold the property to the 1st petitioner herein.

From the pleadings, it is clear that the land in question originally form part of larger parcel of land held by an inam tenure by the vendors of the petitioner and their predecessors, who are inamdars. The inamdars sold the property (lands in question) in favour of the 1st petitioner under a registered sale deed for a valuable consideration. Admittedly, there is no restriction on the rights of the inamdar to alienate any part of the land held by an inam tenure. However, such a sale took place subsequent to the enactment of the Act. Prior to the introduction of Section 2(A), which was added to the Act by amending Act 2 of 1975, the Act did not provide

for any transfer of any right of the inamdar and vesting of the same in the State. The Act essentially provided for conversion of the inam tenures into ryotwari tenures and grant of a ryotwari patta in favour of either the inamdar or where such lands are under the cultivation of a tenant, the patta is required to be given both to the tenant and the inamdar in accordance with the principles indicated in the Act, the details which may not be necessary for the present purpose.

The distinction between an inam tenure and a ryotwari tenure is well settled, which was elaborately considered by a larger Bench of this Court in a case reported in ***NELLORE BUJJAMMA & ANOTHER v. THE TAHSILDAR, RAPUR & ANOTHER,*** Justice Ramachandra Rao, speaking for the Bench, after elaborate enquiry into the distinction between inam tenures and ryotwari tenures, observed as follows:

> "It will be seen that in the case of inam lands they are held either free of assessment or are liable to pay quit-rent, jody or other amount of like nature, which is much less than the assessment payable in respect of similar ryotwari lands. Thus, the essential incident of an inam tenure is the grant of a land either rent free or at low quit-rent or jody or other amount of like nature. It is this benefit of holding the land either rent-free or at low quit-rent or jody or other amount of like nature that is taken away by conversion of the inam tenure into ryotwari tenure and full assessment under the ryotwari system is levied."

Under Section 4(1) of the Act, it is declared that a person or institution holding inam land as inamdar on the date of the commencement of the Act, either in a ryotwari or zamindari is entitled for a ryotwari patta for such land. Under Section 4(2) of the Act, it is stipulated that if such inam land is situated in an inam village, such inamdar, if an institution, is entitled for a ryotwari patta for the entire land. If the inamdar is other than an institution, such inamdar is entitled for a ryotwari patta only to a portion of such land depending upon the various contingencies contemplated under sub-section 2(b) and (c) of Section 4 of the Act.

Necessarily, the questions whether a particular piece of land is an inam land and if

so it is an inam land located either in a ryotwari or zamindari village or in an inam village and also whether the inamdar is an institution or a person other than an institution, are the questions of fact, which require determination by an appropriate authority (Tahsildar) after an appropriate enquiry to be conducted in accordance with Sections
3 and 7 of the Act.

Having regard to the language of Section 3, such a determination may be made either on an application by interested person or *suo motu* by the "Tahsildar", a defined expression under Section 2(j) of the Act. Section 3 also prescribes the procedure to be followed by the Tahsildar while conducting an enquiry into one of the institutions indicated above.

Admittedly, the petitioner herein never made any application contemplated under Section 3 nor an application was made by the petitioner under Section 7 of the Act for grant of a ryotwari patta. On the other hand, the title deed of the petitioner describes the property as part of the inam land and also according to the counter filed by the 1st respondent, the property is shown in the revenue records as "Inam Tank".

Assuming for the sake of arguments that the property in question was an Inam Tank on the date of alienation in favour of the petitioner, whether the same is continued to be an inam tank all these years i.e., up to the date of the commencement of A.P. Act 2 of 1975 by which Section 2(A) was introduced, is a question, which requires an enquiry into the facts. Such an enquiry becomes imperative in view of the declaration made under Section 2(A) of the Act, which reads as follows:

> "**Transfer to, and vesting in the Government of all communal lands, porambokes etc., in inam lands**:-
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> Notwithstanding anything contained in this Act all communal lands and porambokes, grazing lands, waste lands, forest lands, mines and quarries, tanks, tank-beds and irrigation works, streams and rivers,

> fisheries and ferries in the inam lands shall stand transferred to the Government and vest in them free of all encumbrances."

It can be seen from the declaration that the Legislature declared that various categories of lands like communal lands, porambokes, grazing lands, waste lands, forest lands etc., specified in the section and which are part of inam lands stand transferred to the Government and vests in the Government free of all encumbrances. Necessarily, whether a particular piece of land is a part of an inam or not is a question of fact to be determined on the basis of evidence, be it revenue records or other material. Further, the question whether such a piece of land is arable land or land answering the description of the various kinds contemplated under Section 2(A) of the Act also requires an enquiry. The Act is silent either on the nature of such enquiry or the procedure to be followed on such an enquiry required for the determination contemplated under Section 2(A) of the Act. Even the rules framed in exercise of power under Section 17 of the Act in the year 1957 are also silent, both about the conduct and the procedure to be adopted at the enquiry, which is necessary for the determination of the questions arising under Section 2(A) of the Act.

In the absence of any specific provision dealing with the conduct of the enquiry, the respondents relied upon Rule 3 of 1957 Rules, which prescribe the procedure for the conduct of enquiry contemplated under Section 3 of the Act. Sub-rule (5) of Rule 3 contemplates a personal notice to the person and on all other persons known or believed to be interested in the lands specified in the notice, which reads as follows:

> "3 (1) Every application under sub-section (1) of Section 3 shall be in writing, and shall specify the name and address of the applicant, the location, description and extent of the land in respect of which he desires an enquiry to be held under the said section, and the nature of the interest claimed by the applicant in the said land.
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> (2) The notice referred to in sub-section (2) of Section 3 shall be in Form 1 and shall require every person or institution claiming an interest in the lands specified in such notice to file before the Tahsildar the statement of particulars referred to in the said sub-section, within a period of (thirty days) from the date of publication of

such notice.

(3) The notice referred to in sub-rule (2) shall be published in the village or town where the lands specified in such notice are situate, in the following manner:-

i. by affixture in the Chavadi or if there is no Chavadi in some conspicuous place in the village or town, and:

ii. by beat of tom-tom in the village or town.

(4) A copy of the notice referred to in sub-rule (2) shall also be affixed.

i. to the notice board of the office of the Tahsildar concerned, and

ii. in a case where the lands specified in such notice are situate within a panchayat or a municipality, to the notice board of the office of such panchayat or municipality.

(5) A copy of the notice referred to in sub-rule (2) shall also be served on the person or institution, if any, making an application under sub-section (1) of Section 3, and on all other persons known or believed to be interested in the lands specified in the notice.

(6) The service of the notice referred to in sub-rule (5), shall be effected either by delivering or tendering it to the person, and, in the case of an institution, to the trustee, manager, executive officer or other person in-charge of the institution, or to his agent, or to any adult member of his family, or where none of the above courses is practicable, by affixing it at his last known place of residence or by sending it to his last known place of residence by registered post acknowledgment due.

(7) Every decision of the Tahsildar under sub-section (3) of Section 3, or of the Revenue Court under sub-section (4) of the said section,

shall be in Form 11: every decision of the Revenue Court under sub-section (4) of Section 3 and if no appeal is filed within the period specified in the said sub-section, every decision of the Tahsildar under sub-section (3) of the said section shall besides being published in the District Gazette, be also published-

i. by affixture in the Chavadi, or, if there is no such Chavadi, in some conspicuous place of the village or town in which the lands referred to in such decision are situate.

ii. by beat of tom-tom in the said village or town,

iii. by affixture to the notice board of the Office of the Tahsildar concerned, and

iv. in a case where the land specified in such decision is situate within a panchayat or a municipality, by affixture to the notice board of the office of such panchayat or municipality."

The respondents having adopted the procedure contemplated under Rule 3 though strictly, under language of Rule 3 it is not applicable for an enquiry conducted for the purpose of Section 2(A), they must have at least comply with the letter of Rule 3 by serving a personal notice on the petitioner. Obviously, the respondents cannot plead ignorance of the interest of the petitioner in the lands in dispute, in view of the statement made in the counter-affidavit at page 3, which reads as follows:

"In the year 1958, Sri Sarvabotla Satyanarayana, Smt. Sarvabotla Subbarathnamma and other legal heir of the original inamdar have sold away their property under Inam Patta No.1643 to Sri Dega Seshu Reddy, the petitioner and others".

In the counter, it is not stated anywhere that the personal notice was served on the petitioner though the details of the publication of the notice in the Grampanchayat and beat of tom- tom are given. The allegation of the petitioner that no personal notice was served on the petitioner went un-rebutted.

In the circumstances, the writ petition is allowed holding the final declaration in Form-II dated 06.06.1995 referred to in the counter, published under Section 2(A) of the Act, insofar as the land in question is void, on the ground that it is contrary to the principles of natural justice. It is open for the respondents to hold such an appropriate enquiry after giving a reasonable opportunity to the petitioner to establish his rights, if any, in the lands in dispute and take appropriate action in accordance with law. No order as to costs.

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J.CHELAMESWAR, J

Date: 19.04.2006

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